Collective Efforts

A new book focussing on legislation promoting cr0ss-border collective redress has been published by Oxford University Press. Edited by Duncan Fairgrieve and Eva Lein, both of the British Institute for International and Comparative Law, Extraterritorality and Collective Redress brings together analysis of the subject by contributors on both sides of the Atlantic. The long, and impressive, list of authors and topics under discussion is as follows:

Part I: Collective Redress Mechanisms in a Comparative Perspective

1: Diego Corapi: *Class Actions and Collective Actions* 2: Duncan Fairgrieve and Geraint Howells: *Collective Redress Procedures: European Debates* 3: John Sorabji: *Collective Action Reform in England and Wales* 4: Ianika Tzankova and Hélène van Lith: *Class Actions and Class Settlements Going Global: An Update from the Netherlands* 5: Alexander Layton QC: *Collective Redress: Policy Objectives and Practical Problems*

Part II: Private International Law and Collective Redress

6: Burkhard Hess: *A Coherent Approach to European Collective Redress*: 7: Horatia Muir-Watt: *The Trouble with Cross-Border Collective Redress: Issues and Difficulties* 8: Eva Lein: *Cross-Border Collective Redress and Jurisdiction under Brussels I: A Mismatch* 9: Justine N Stefanelli: *Parallel Litigation and Cross-Border Collective Actions under the Brussels I Framework: Lessons from Abroad* 10: Duncan Fairgrieve: *The Impact of the Brussels I Enforcement and Recognition Rules on Collective Actions* 11: Astrid Stadler: *Conflicts of Laws in Multinational Collective Actions: a Judicial Nightmare?* 12: Andrea Pinna : *Extra-territoriality of Evidence Gathering in US Class Action Proceedings* 13: Catherine Kessedjian: *The ILA Rio Resolution on Transnational Group Actions* 14: Rachael Mulheron: *The Requirement for Foreign Class Members to Opt-in to an English Class Action*

Part III: Reception of Foreign Collective Redress and Punitive Damages Decisions in National Jurisdictions

15: Francesco Quarta: *Foreign Punitive Damages Decisions and Class Actions in Italy* 16: John P Brown: *Certifying International Class Actions in Canada* 17:

Marta Requejo Isidro and Marta Otero Crespo: *Collective Redress in Spain: Recognition and Enforcement of Class Action Judgments and Class Settlements*

Part IV: Extraterritoriality and US Law

18: Thomas A Dubbs: *Morrison v. National Australia Bank: The US Supreme Court Limits Collective Redress for Securities Fraud* 19: Linda Silberman: *Morrison v. National Australia Bank : Implications for Global Securities Class Actions* 20: Adam Johnson: *Morrison v. National Australia Bank: Foreign Securities and the Jurisdiction to Prescribe* 21: Vincent Smith: *'Bridging the Gap': Contrasting Effects of US Supreme Court Territorial Restraint on European Collective Claims* 22: Wolf-Georg Ringe and Alexander Hellgardt: *Transnational Issuer Liability after the Financial Crisis: Seeking a Coherent Choice of Law Standard*

Congratulations to Eva, Duncan and the other contributors.

Publication Private International Law responses to Corruption

Prof. Dr. Xandra E. Kramer (Professor at Erasmus School of Law, Rotterdam) has posted an article on the interface between private international law and corruption on SSRN entitled 'Private International Law Responses to Corruption.Approaches to Jurisdiction and Foreign Judgments and the International Fight Against Corruption'. It is part of a publication containing three research reports on 'International Law and the Fight Against Corruption' (from a criminal law, a public international law and a private international law point of view). These reports are written for the annual meeting of the Royal Dutch Society of International Law (Dutch branch ILA), and will be discussed on 2 November 2012. The abstract reads:

'This paper explores how private international law responds to corruption, with a

focus on the assessment of international jurisdiction and the recognition and enforcement of foreign judgments. The question is what the possible private international law responses are in cases where a foreign court or a foreign judgment is tainted by corruption. The paper evaluates to what extent private international law provides adequate mechanisms to deal with corrupt conduct and how courts approach allegations of corruption in these cases. It considers rules and courts' approaches in the Netherlands, England and The United States. It is concluded that only in little cases courts actually consider corruption in deciding private international law questions since the courts approach these questions in a rather formal way. Some of the court decisions, or at least the argumentation in these cases, are to be regretted.

It is stated that the problem of corruption also raises the question as to the position of private international law in today's world and in particular Von Savigny's paradigm of value-neutralism. Its particular strength may be that private international law is utilised as a neutral mediator in international disputes where law, culture, and values differ. In a rather formal way it regulates and coordinates issues of the applicable law and jurisdiction while leaving diversity intact. But whatever one thinks of the Savignian idea that private law stems from the people's mind (or Volksgeist), the reality today is that private law is an important instrument to effect policy objectives and to influence human behaviour. In an era of globalisation and in the face of the reality of corruption, not only criminal law and public international law can make a stand; private law and private international law can play a role as well. As the discussion in this paper shows, the private/public law divide is not always useful in the first place. This does not mean that the primary role of private international law should be that of a normative agent or a system of global governance. The point is that where necessary, such as in cases of serious corruption resulting in a real risk of injustice, private international law engagement is appropriate. Courts should not hide behind self-induced comity and formalism – instead, in these cases a guiding factor should be the international consensus on the repudiation of corruption. Only then can private international law contribute to the international fight against corruption.'

Publication Cross-Border Collective Redress in the European Union

Professor Stacie I. Strong (Associate Professor, University of Missouri School of Law) has posted an interesting article on collective redress in the EU on SSRN: 'Cross-Border Collective Redress in the European Union:Constitutional Rights in the Face of the Brussels I Regulation'. It is an article forthcoming in 45 Arizona State Law Journal (2013). The abstract reads:

'In February 2012, the European Parliament broke new legal ground when it adopted a revolutionary new resolution aimed at establishing a coherent European approach to cross-border collective redress. After years spent resisting any sort of mechanism that resembled U.S.-style class actions, the E.U. is now set to develop a unique form of regional collective relief that will offer European plaintiffs a range of previously unexplored legal opportunities. However, this new procedure will also give rise to a variety of entirely unprecedented challenges.

This Article considers the various issues associated with the creation of a system of collective relief in a region that has traditionally been hostile to the provision of large-scale private litigation. In so doing, the discussion focuses on the clash between certain constitutional rights relating to the ability of the plaintiff to choose the time, place and manner of bringing suit and the European Union's primary form of legislation concerning cross-border procedure, Council Regulation 44/2001 on jurisdiction and on recognition and enforcement of civil and commercial judgments, commonly known as the Brussels I Regulation.

Although this analysis is set within the confines of European Union law, it sheds new light on the U.S. class action debate by unbundling certain procedural rights held by the parties. Furthermore, many of the issues discussed in the Article may soon be directly relevant to U.S. parties if a number of proposed revisions to the Brussels I Regulation are enacted as expected.

Interest in international class and collective relief has never been higher among corporate, commercial, consumer and antitrust lawyers. This Article provides important insights into key European issues that give rise to significant

ramifications for U.S. interests.'

Rösler on the European Judiciary in Private Law

Hannes Rösler, Senior Reserach Fellow at the Max Planck Institute for Comparative and International Private Law in Hamburg, has published a monograph on the European Judiciary in the Field of Private Law (Europäische Gerichtsbarkeit auf dem Gebiet des Zivilrechts, Mohr Siebeck 2012). Looking into the interaction between national and European courts in private law, *Rösler* asks whether the current system is effective enough to implement European Union law. He analyses the present situation and various reform options from the standpoint of private law and with the aid of interdisciplinary approaches.

More information on the book is available on the publisher's website. A detailed description of the work, including an interview with the author, is available here.

Esplugues on the Madrid Principles

Carlos Esplugues Sr. (University of Valencia) has posted Harmonization of Private International Law in Europe and Application of Foreign Law: The Madrid Principles of 2010 on SSRN.

> *Over the past few years, the European Union has undertaken an active and broad process of harmonization of Private Law and Private International Law. Focusing on choice-of-law rules, many diverse areas of law have been*

influenced by this harmonization, so that today a growing set of common choice-of-law rules exists within the European Union. Nevertheless, this process, directly grounded upon Article 81 TFEU, is far from being finished. The harmonization effort will likely increase in the near future so as to embrace many domains not yet governed by the European instruments. These future developments will vastly alter the basis and current situation of PIL in Europe, leading to a dramatic change of scene in the years to come. Besides, harmonization will create an additional effect; the process undertaken will foster an even more rapid expansion of international and interstate trade and, therefore, increase the number of cross-border cases arising within the EU integrated territory.

Focusing primarily on what is still to be undertaken within the process of harmonization of PIL in Europe, there is still some concern about the lack of a common set of rules governing the application of foreign law by EU judicial and non-judicial authorities. Although this is a longstanding and well known issue, no common action has been taken so far in Europe, which has created a real and insurmountable weakness in the whole process of harmonization4 that is capable of undermining the very effectiveness of the designed common system of choice-of-law rules. The Article deals with the current situation and analyzes the so-called Madrid Principles, approved in February 2010 in order to foster the adoption of a common EU rule on this area.

The paper was published in the *Yearbook of Private International Law* (Vol. 13, pp. 273-297, 2011)

ELI Statement on CESL Proposal

It has not yet been mentioned on this blog that the European Law Institute has published an extensive Statement on the Proposal for a Common European Sales Law. The Statement (critically) analyses the Proposal in the light of the European Commission's policy objectives and makes recommendations how to achieve them. The Statement can be downloaded here free of charge.

13th Ernst Rabel Lecture at the Max Planck Institute in Hamburg

On 5 November 2013, *Mathias W. Reimann*, Hessel E. Yntema Professor of Law at the University of Michigan Law School, will deliver the 13th Ernst Rabel Lecture at the Max-Planck-Institute for Comparative and International Private Law in Hamburg. He will discuss "Why Americans make better Global Lawyers". More information is available here.

On Legal Pluralism and Multiculturality

Pluralismo y multiculturalidad: Tribunal arbitral musulmán y consejos islámicos (Sharia courts) en el Reino Unido is the title of the last paper by professor V. Camarero Suárez and professor F. Zamora Cabot, both from the University of Castellón. The paper, written in Spanish, has been published in the *Anuario de Derecho Eclesiástico del Estado*, 2012; professor Zamora will kindly send a pdf copy to those interested (just send him an email to this address: zamora@dpr.uji.es)

Here is the abstract:

> This study explores the interface between legal pluralism and multiculturality, taking as reference british muslim minority *nomoi* groups and the alternative means of solution of controversies embodied in the Sharia Councils and the Muslim Arbitral Tribunal (MAT). However, before dealing with this matter in the United Kingdom, our study makes insights from a comparative point of view both in Canada and the United States, where, in

spite of no minor similitudes, the status of the aforesaid means of alternative solution of controversies is, at present time, far more different, given a deeper degree of religious pluralism and more reliance in arbitration at large in the United States. These two factors, and the widely known pragmatism and tolerance of the United Kingdom result, although there have been rounds of controversy about it, in the acceptance in that Country of the workings of the Sharia Councils and the MAT, in the twilight of British law- in the first case- or taken under the rule of that law, covered by the Arbitration Act of 1996, in the case of the MAT. Conceived on these terms, we agree on the acceptation of these types of controversies's solutions – specially in case of the MAT- that we think are in full accordance with the modern State's duty to preserve minorities' rights and freedom of religion and beliefs as examples of a genuine commitment towards the fulfillment of Human Rights.

Recovery of Maintenance in the EU and Worldwide

The German Institute for Youth Human Services and Family Law is holding a Conference in Heidelberg from 5 to 8 March, 2013 (call for papers was announced here last March). Conference registration is possible from now on; registrations until 30 November 2012 are granted an early-bird discount of 20 %.

A taste of program:

- Prof. Dr. Dr. h.c. mult. Erik Jayme, **"Cultural dimension of maintenance from an international law perspective"**
- William Duncan, **"From complexity to simplicity, from chaos to Hague Convention 2007"**
- Presentations of **"High functional administrative systems",** rounded out by a presentation on **IT-solutions** with Philippe Lortie
- Workshops dealing with the details of the new legal instruments such as

“EU Maintenance Regulation: the devil’s in the detail” *or* **“Applicability and application of foreign law”** and presenters as Prof. Paul Beaumont, Prof. Dr. Burkhard Hess, Chris Beresford, Hannah Roots, Maja Groff, Dr. Matthias Heger & Dr. Thomas Meysen

- Hot topics in family law like **“Defining and establishing parentage: national approaches and new challenges**” with Prof. Frédérique Ferrand
- Workshops with Central Authorities: **“How to cooperate effectively?”** and workshops on national maintenance law: **“Diversity in a united world of child support: national reports”**
- **“Good practice for caseworkers: the rocky pathways to the recovery of maintenance”** with Mary Dahlberg, Gary Caswell and Martina Heller
- **“The Asian, American, African, Latin-American perspectives”** will be presented by contributors such as Dr. Richard Frimpong Oppong, Robert Keith, Prof. Nadia de Araújo & Dr. James Ding.
- And, not least of all, outside-the-box-thinking with topics like: **“Children in focus – poverty and maintenance”** or **“Alternative dispute resolutions”** with Lis Ripke & Jessica Pearson

If you have any questions about the program, please contact Dr. Elisabeth Unger (E-Mail: unger@dijuf.de).

For questions about conference registration, please contact Margit Hüber (E-Mail: hueber@dijuf.de).

For more information on the program and the contributors please click here.

VIIth Complutense Seminar on Private International Law

The International Seminar on Private International Law promoted by Professor Fernández Rozas and Professor De Miguel Asensio (University Complutense, Madrid) will soon become a tradition. The satisfying experience of the last six

years has encouraged the organizers to hold the seventh edition next April 2013. Keeping the pattern of its precedents, the forthcoming Seminar will combine a general approach centered on recent developments and future prospects in different fields of private international law, with specific attention to singular current issues, or issues most in need of study. One whole panel will be devoted to registry law – particularly to the new Spanish Civil Registration Act and its consequences for private international law. Other sessions will accommodate papers and communications on other relevant issues. Spanish, English and French will be spoken -though no translation is provided.

This edition's speakers will be, among others, Professor Gerald Spindler(Georg-August-Universität Göttingen), Professor Bertrand Ancel (Université Paris II), and Professor Thomas Clay (Université de Versailles). Short contributions from academics and law professionals are welcome provided they are timely submitted. In this regard the organizers kindly request those intending to participate to send an email to Professor Patricia Orejudo (patricia.orejudo@der.ucm.es) as soon as possible, and at any rate before November 30, 2012, including the title of the proposal and a brief summary of its contents. Accepted papers will be eligible for publication in the 2012 volume of the *Anuario Español de Derecho Internacional Privado*, subject to prior scientific peer evaluation. The final written version shall not exceed 25 pages in Word format (double-spaced, DIN A-4, Times New Roman 12 for text and 10 for footnotes). It must be handed over in April 1, 2013 at the latest.

The suggested dates for the Seminar are 11 and 12 April 2013. Most of the panels will be held at the Faculty of Law of the Universidad Complutense de Madrid, though some may take place somewhere else in Madrid.

The definitive program and schedule will be announced here as soon as they are ready.